IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9579 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI THAKOREBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MS MITA PANTAL, AGP Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order passed by the Police Commissioner, City of Surat, on 14.2.2003, in exercise of powers under Section 3(1) of the Gujarat Prevention of

Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be "bootlegger" and his activities to be prejudicial to public order. In pursuance of the order impugned, the petitioner came to be detained on 15.2.2003.

2. While passing the above said order, the detaining authority under the PASA Act, took into consideration two aspects of the matter. The first is in respect of registration of the offences against the petitioner. The grounds which were served upon the petitioner and placed on record reveals that on 27.11.2002 and on 11.12.2002, two offences registered against the petitioner for the charges under Sections 66(1)(b), 65(e) and 81 of the Bombay Prohibition Act. The second aspect which the detaining authority had taken into consideration is in respect of statements of the witnesses whose identity was concealed u/s 9(2) of the PASA Act. According to grounds served and as per the statements recorded by the proposing authority on 3rd February, 2003 and the other on 4.2.2003, two incidents were took place, one on 29.12.2003 and second on 19.1.2003. In the first incident, which occurred on 29.12.2002, the witness stated that the petitioner called him and told that the witness was offering information to the Police about his business of liquor. On refusal, the witness was beaten by the petitioner and when crowd was gathered and was attempting to escape the witness, the associates of the petitioner rushed towards the crowd with the weapons like hockey sticks and lathies and, therefore, the crowd was dispersed. The other incident, which occurred on 19.1.2003, the witness stated that the petitioner demanded his vehicle for transporting country liquor. On refusal, the witness was beaten and like earlier incident when the crowd was gathered to rescue the witness, the associates of the petitioner rushed towards the crowd with the weapons and the crowd was disturbed. Therefore, the detaining authority on this material came to the conclusion that the petitioner was bootlegger within the meaning of the PASA Act and his activities were prejudicial to the maintenance of the public order and hence the impugned order of detention came to be passed.

3. Learned Advocate Mrs. S.G. Patel for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard.

4. On behalf of the petitioner many contentions raised and controverted by the AGP. Out of the contentions raised, it appears that this petition can be disposed of only on the ground of delay caused in passing

of the order. It is an admitted fact on record that last offence under the Bombay Prohibition Act came to be registered against the petitioner on 11.12.2002. Thereafter, the statements of witnesses were recorded by the proposing authority on 3.2.2003 and 4.2.2003. The statements came to be verified by the detaining authority only on 13.2.2003 and the order came to be passed on 14.2.2003 though the witnesses have stated the incidents which are unreported of 29.12.2002 and 19.1.2003, there is apparent delay in passing of the order of detention. Last offence was registered on 11.12.2002. The police discovered the unreported incident only on 3 and 4th of February, 2003. There is again delay in verifying the statements, vitiating the order of detention. The credible link between the activities of the petitioner and the passing of the order is snapped. Though the delay, ipso facto, is not fatal in passing order of detention when it is explained or when it is found reasonable from the facts and circumstances of the each case. The petitioner has raised the plea in this respect in the petition. In this view of the matter, the detention order passed cannot be said to be legal and valid and deserves to be quashed. This view is fortified by two decisions of this Court in the matter of THAKORE GIRISHJI @ GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002 (1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. The view is also supported and fortified by a decision of the Apex Court in the matter of PRADEEP NILKANTH vs. S.RAMAMURTHY, reported in AIR 1994 SC 656.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order passed by the Police Commissioner, Surat, on 14.2.2003 under Section 3(1) of the PASA Act directing the detention of the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair